

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

REPLY STATEMENT
OF
DEFENDANT NORTH COAST RAILROAD AUTHORITY

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NORTH COAST RAILROAD AUTHORITY ("NCRA") states as follows:

I. INTRODUCTION

By Decision served on July 27, 2005, the Board denied the Trustee's complaint stating:

"We find no merit to the Trustee's complaint. In order to be found to have violated the common carrier obligation at 49 U.S.C. 11101(a) a carrier must have failed to provide service upon reasonable request . . . here the Trustee concedes that, in the 6.5 years since the line went out of service in 1998, neither CWR nor Georgia Pacific, the only shipper on the line, ever requested that service be provided . . .

Furthermore, the records show that there was minimal traffic on the line and that the repairs that would have been required to bring the line into compliance with FRA safety regulations would have been expensive . . . The Supreme Court has found that 'it is well settled that a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation.'"

In November 2005, the Board granted California Western's Motion to Reopen to provide California Western a "full opportunity" to present its evidence.

Other reasons cited by NCRA for dismissal of the Complaint in addition to the Complainant's failure to reasonably request service include: (1) the fact that the statute of limitations for filing a complaint have passed; (2) NCRA was the wrong party against which to file a complaint because it was not the carrier with the common carrier obligation during the relevant period of the Complaint; (3) no common carrier obligation was due Complainant because Complainant was not a shipper; (4) a Federal Railroad Administration Order barred operation of the line, thereby making any failure to perform railroad operations reasonably excused; and (5) NCRA as a state agency enjoys immunity from suit under the Eleventh Amendment.

Responding Party incorporates by reference the Verified Statement of John Darling dated October 10, 2005 in Opposition to Petition to Reopen in which Mr. Darling flatly denies having the conversations attributed to him by the Complainant's offer of proof as to whether a request for service was ever made.

II. STATEMENT OF FACTS

NCRA was created by the California Legislature in 1989 by the North Coast Railroad Authority Act, California Government Code § 93000, *et seq.* The California Legislature stated that its intent in creating NCRA was "to provide an alternative for ensuring railroad service if the Interstate Commerce Commission authorizes the abandonment or discontinuance service on, or in the event of the bankruptcy or sale of, the current Eureka Souther Railroad Line, the Northwestern Pacific Railroad line, or the California Western Railroad Line." See Cal.Gov.Code § 93001.

NCRA purchased the northern half of the rail line, the Eel River Division, running from Willits to Arcata in 1992 from the Eureka Southern Rail Line for \$5 million. (See Hemphill V.S., ¶7).

In 1992, NCRA commenced service on the Northern Division, interchanging at Willits. During that time, the State of California allocated millions of dollars for improving the Eel River Line.

In April 1996, NCRA, in partnership with the County of Marin and the Golden Gate Bridge, Highway & Transportation District, purchased the railroad formerly operated by Southern Pacific under the firm name and style of the Northwestern Pacific Railroad from Willits to Napa for \$23 million. (See Hemphill V.S., ¶¶ 10-12).

In August 1996, NCRA commenced operations across the entire course of the NWP Line until February 1998 when it entered into an operations lease with Northwestern Pacific Railway Company, LLC ("NWPY"). Almost concurrently in February 1998, an El Niño Pacific storm resulting in a Presidential Disaster Declaration, closed the entire line.

In the Spring of 1998, NCRA by contract with NWPY's sister company, Rail-Ways, Inc. reopened the rail line for service at an expense of over \$1 million. (See Hemphill V.S., ¶15).

In November 1998, the Federal Railroad Administration issued FRA Emergency Order No. 21, Notice No. 1, entitled "Northwestern Pacific Railroad Emergency Order to Prevent Operation of Trains on Northwestern Pacific Railroad's Trackage from Arcata, California to Mile Post 63.4 Between Schellville and Napa Junction, California" citing maintenance concerns dating back to 1990, well prior to NCRA's purchase of the Eel River Division in 1992 and the Russian River Division in 1996. Specifically noted was the fact that thirty-two of the 127 grade crossing signals were not operational, resulting in train crews stopping and flagging crossings where

signals were out of service.

On August 8, 2002, Georgia Pacific, the sole freight shipper upon the California Western closed its mill after a slow decline over a number of years. (See Attachment A). Cited as reasons by Georgia Pacific for the closure was an overabundance of lumber products and stiff competition. Availability of rail service was not mentioned.

In December 2004, Michael Meyer, Trustee in Bankruptcy for the California Western Railroad filed this Complaint against NCRA alleging that it was doing business as the "Northwestern Pacific Railroad," that its contract operator NWPY had "relinquished its lease." (Complaint, ¶2). The Complainant on behalf of the Bankruptcy Estate, alleged lost freight revenue at an estimated operating ratio of eighty-percent (80%) yielding a claim for \$270,000 net operating income loss.

Contemporaneously with filing the Complaint, the Complainant also filed a Petition for Partial Revocation of Exemption in STB *Ex Parte* No. 346 (Sub No. 25), Rail General Exemption Authority - Lumber Wood Products to enable the Board to entertain its Complaint, its sole freight shipper, Georgia Pacific Corporation tendering lumber products for shipment.

III. LEGAL ARGUMENT

A. California Western Failed to Request Service.

No discernible request for service to NCRA has been identified by California Western, despite the Complainant being offered a "full opportunity" to provide documentation of such a request. At the outset, the Trustee admitted that no request for service had been made, stating in its Reply that "for Complainant to have asked Respondent to start hauling shipments originating on the CWR

. . . would have made no sense whatsoever." (Meyer Reply, ¶9-10). After the Board accepted

the admission that no request for service had been made, the Trustee sought to reopen, but now offers no written request into evidence demonstrating a request being made to either NCRA or to NWPY. This failure to produce a written request is remarkable as the parties were accustomed to dealing formally with each other, as evidenced by the Release Agreement entered into by the parties in July 2002. (See Hemphill V.S., ¶¶ 24-26 and Ex. B-1 thereto).

In its Petition for Reopening, Complainant offered the verified statements of John Mayfield and Gary Milliman, former operation officers of California Western before it declared bankruptcy. Mr. Mayfield's statement referenced oral requests at unspecified times. He stated:

"I repeatedly spoke with Mr. Darling about reopening the Willits-Schellville line to permit the handling of Georgia Pacific's lumber cars, but to no avail." (Mayfield V.S., ¶3).

In response, NCRA offered the statement of John Darling who stated that his first conversation ever with John Mayfield occurred on May 22, 2001, when he sought a consulting opportunity from California Western. Mayfield, in the Complainant's Opening Statement, does not credibly dispute John Darling's recollection, but renews his allegation stating that perhaps unidentified other persons made California Western's "concerns" known to NWPY. (Mayfield V.S., p.3).

After having a "full opportunity" to present evidence of a request having been made, plaintiff points only to generalized recollections of informal conversations at unstated times and without clear identification of the participants. No document has been produced. Plaintiff, having access to the written minutes of the board meetings of NCRA, has not identified any meetings at which Mr. Milliman was in attendance, or his having addressed the NCRA Board at any time about any topic. The Trustee attaches minutes of NCRA to his opening statement demonstrating that he has access to NCRA's minutes.

Also, it is notable that Complainant does not point to any oral or written request by the actual shipper to NCRA for service. The alleged oral requests for service were made by Complainant to support its claim for loss of profit.

In short, the Complainant has failed to produce evidence or establish that a request was ever made to NCRA.

B. Had CALWESTERN Requested Service, It Would Have Been Unreasonable.

Despite the Complainant's strong language that NCRA failed to maintain the rail line and suffered Emergency Order No. 21, the fact remains that the rail line suffered from deferred maintenance when purchased by NCRA, a governmental authority, a mere thirty months prior to Emergency Order No. 21 citing maintenance concerns and problems dating back to 1990, some eight years prior.

The public invested in the Russian River Division serving California Western and has spent tens of millions of dollars to acquire and preserve rail service. This investment was not made for the purpose of reaping commercial rewards, but rather to preserve the railroad. That the rail line was and is unprofitable is evidenced by the Southern Pacific Abandonment Petition in the 1980s, when it sought to abandon the entire Northwestern Pacific rail line. This is punctuated by the bankruptcy of two of its successors, the Eureka Southern and Rail-Ways, Inc., and the insolvency of NWPY.

The opening argument references the Trustee's unqualified opinion that the cost to reopen the Russian River Division is minimal. Complainant states:

"The Trustee has no idea what the cost of securing partial relief from FRA Emergency Order No. 21 to restore the interchange at Willits and to resume operations on the line to Schellville would be, but estimates that it cannot be more than \$100,000."

The Trustee, with the burden of proof, seeks to identify an important component of its cause by an unqualified speculation minimizing the cost of restoring the railroad. Apparently this is a situational argument attempting to cover the Board's earlier stated concern that a request for service, if made, would have been unreasonable. The actual cost to restore the railroad to just Class I operating conditions, as required by Condition 5 for Relief from FRA Emergency Order No. 21 is \$23 million, of which, \$8.8 million is for signal restoration alone. See *Anderson V.S.*, ¶7.

That the State of California was willing to invest \$23 million to acquire this unprofitable rail line and to undertake the repairs necessary to restore it to service at a cost of another \$23 million could hardly be justified economically by the optimism of the Trustee that California Western would generate an "average sixty carloads of Georgia Pacific Corporation lumber shipments." The public justification for reopening the railroad is not tied to any reasonable request that either California Western or Georgia Pacific might have made, but rather to the fact that the State of California is committed to reopening this rail line for purposes of stimulating economic development.

That the public appropriation of the funds necessary to reopen this rail line, while having been appropriated, have not yet been accessed by NCRA for environmental and administrative reasons beyond its control does not detract from the public's commitment to reopen the line. See *Stogner V.S.*, ¶5.

That the public is serious in this commitment is evidenced by the fact that within the last six months, NCRA has repaired two bridges at a cost of \$1.2 million, purchased maintenance equipment at a cost of \$700,000 and signal equipment at a cost of \$700,000. See *Stogner V.S.*, ¶7).

That progress is slow is undeniable, however, progress has been steady and with resolve of restoring rail service over a rail line that might not otherwise be viewed as economically justifiable, standing on its own as a business decision.

It is probable that the future of small unprofitable shortline rail lines throughout the country may lie with state and local governments who will be motivated to keep the rail lines operational for reasons separate and apart from the financial remuneration from operations. Despite the fact that highways provide no revenue to their public owners, substantial funds are invested in maintaining the highway system in operating order so it potentially is with short unprofitable railroads.

The public policy would not be advanced by exposing governments to damage claims while they work through intricate environmental and administrative procedures to expend public funds to restore rail service.

Had California Western demanded that service be restored at a cost of \$23 million to interchange its optimistically stated 60 cars per month, such a request would not have been reasonable as referenced by the Board's Decision served on July 27, 2005 herein.

C. The Complainant's Claim Is Time Barred.

The present Complaint was filed on December 1, 2004 by the Bankruptcy Trustee on behalf of California Western Railroad seeking to find NCRA liable for damages sustained as a result of NCRA's alleged violation of its common carrier obligation. Apparently the Complaint had been prepared in May 2003, but not filed until December 2004.

Complainant's cause is governed by 49 U.S.C. 11705(c) requiring a complaint to be filed within two years after the claim accrues. A party may not recover damages for claims accruing more than two years prior to the filing of the Complaint.

Stepping back two years in time from the filing of the Complaint in December 2004 to December 1, 2002, it is apparent that the Complainant's claims for alleged revenue loss for inability to interchange Georgia Pacific cars is not sustainable. Georgia Pacific closed its plant in August 2002. See Attachment A. Therefore, between December 2002 and December 1, 2004, when the Complaint was filed, Georgia Pacific would have tendered no cars to California Western for interchange at Willits. Therefore, even if Complainant could establish liability, the

Complainant suffered no lost revenue from its single freight operator within the claim period and is entitled to no recovery.

D. NCRA Is Not the Proper Party.

The Complainant filed its Complaint against NCRA, alleging NCRA's failure to perform its common carrier obligation. The Complaint recognized that NWPY was authorized to lease and operate the Northwestern Pacific Rail Line pursuant to Notice of Exemption in STB Finance Docket No. 33998, Northwestern Pacific Railway Company, LLC - Lease and Operation Exemption - North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, served February 6, 2001. The Complainant speculated that it "believes, it [NWPY] has relinquished its lease." This speculation was unfounded. The Lease between NCRA and NWPY did not terminate until June 30, 2005. (See Hemphill V.S., ¶21). Therefore, at all times after December 1, 2002 to the time of the filing of the Complaint in December 2004, NWPY had the primary carrier responsibility, not NCRA.

The Complainant speculated that NCRA held the common carrier obligation, speculated incorrectly, and brought this complaint against the wrong party.

The Complaint also incorrectly interchanges the respondent as being NCRA in places, and "NWP" in others. The name "NWP" was the firm name and style of a Southern Pacific subsidiary.

E. Complainant Has Failed to Establish Actual and Certain Damages.

The Complaint seeks damages of \$132,000 based upon lost "net revenue" of \$132,000 seeking to distinguish speculative lost profits by relabeling it "lost net revenue from freight railway operations." The Complainant has the burden of proof to accurately state any damages with certainty. The Complainant invites the Board to base a damage award upon an estimate of carloads, "approximately sixty carloads of lumber a month," and an approximate yearly count of "about 700 carloads." Beyond that, the Complainant claims it received \$500 per carload for

handling the shipments and that it had an "Operation of about 80, CWR loss of net revenue from freight railway operations came to \$132,000 [sic]." Presumably, Complainant refers to an operating ratio of "about 80%" which yields an approximate "loss of net revenue." There is no effort to document the operating ratio.

Notably missing is the failure of the Complainant to introduce its own internal interchange records of carloads delivered to substantiate the number of carloads as the foundation for its speculation as to lost business. Secondly, the Complainant does not introduce the actual divisions of revenue, demonstrating the actual rates that would apply to the estimated carloads lost.

The Complainant has established no basis upon which the Board can divine the correctness of the conclusionary statement that the Complainant's operating ratios was "about 80%." The Complainant asked the Board to rely upon eight year old recollections supporting approximations rather than business records. There is no quantitative accounting information offered by the Complainant to support the claim that it lost any net revenue. The Complainant has supplied no information for the Board to know whether the Complainant's Net Railway Operating Income ("NROI") is even a positive number.

The Board is asked to speculate on the basis of nothing more than approximations both as to the historical carloads which are an empirical number that should be available to the Complainant, the potential carloads in the future, and as to the profit or net revenue that the Complainant might have recovered.

Furthermore, during the period within the reach of the limitations period, it is apparent that Georgia Pacific would have tendered no carloads because it had permanently closed the mill due to market factors unrelated to transportation.

Also, if Georgia Pacific had sought to interchange the cars with NCRA and request for service had been made by Georgia Pacific or Complainant, and the request had been reasonable, there is a question as to whether California Western could have delivered the cars to Willits.

See Darling Supp. V.S. ¶¶ 3,4.

The Complainant's invitation to the Board to speculate as to Complainant's alleged damages fails to meet its burden of proof to establish accurate and certain damages. Even if liability were established, the Complainant has not supplied any evidence establishing that it has suffered any damages whatsoever.

IV. CONCLUSION

After Complainant's action was dismissed by the Board, Complainant petitioned for an opportunity to reopen the proceedings to have the "full opportunity" to present evidence. The Board has indulged the Complainant's request.

Complainant did not utilize the opportunity to provide new credible evidence, but rather to recycle the verified statements of John Mayfield and Gary Milliman. As to Mr. Mayfield, he backtracks from his original vague and conclusionary assertions in the face of a flat denial set forth in the verified statement of John Darling that he had never conversed with Mr. Mayfield prior to October 2002.

After having an opportunity to present evidence, the Complainant does nothing to clarify whether or not an oral or written request was ever made to NWPY to interchange the Georgia Pacific cars during the December 1, 2002 to December 1, 2004 time period, or ever. There is no evidence that a request was ever made by Georgia Pacific to either NWPY or to NCRA. The only indication that a request was made to NCRA by anyone is Gary Milliman's recollection that he appeared at an NCRA board meeting and made an oral request. Mr. Milliman's recollection is not corroborated by the recollection of the recipient as evidenced by Mr. Hemphill's verified statement and is not corroborated by the minutes of the Board of Directors or any other document.

A request for service upon which a damage claim might be premised should be made of sterner stuff.

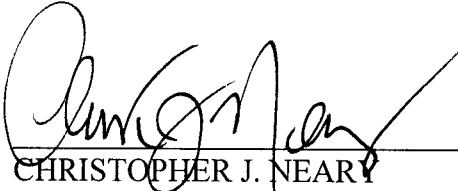
Even if a request for service had been made, it would not have been reasonable. The

Complainant's speculation that repairs would cost only \$100,000 is effectively rebutted by the verified statement of David Anderson indicating that the cost is \$23 million, which has as its foundation an inspection by a qualified engineering team and a qualified opinion as to such cost.

Even if the request for service had been made, and even if it had been reasonable, Complainant has established no evidence of damages because its sole freight customer was closed during the entire limitations period.

Furthermore, the damage calculation is premised entirely upon approximations when actual documents are within Complainant's control. Complainant asks that damages be established by "approximate" car loadings, the foundation for which is nothing more than conclusionary speculation. Even if the carloadings were accepted as being accurate, the lost profits, or lost net revenue, has as its keystone an approximate profit ratio which is not described or documented. The profit ratio is stated in conclusionary form. Such a conclusion is magnified by the fact that it is unsupported by any accounting documentation, which is presumably in the control of the Trustee, or Mr. Mayfield and Mr. Milliman. Furthermore, a profit ratio of 80% is intuitively so high as to be *prima facie* not credible.

After having a second bite at the apple to address the Board's findings, the Trustee has presented scant evidence that there was a wrong, or that there was damage. The Complainant should take nothing by his Complaint.


CHRISTOPHER J. NEARY
Attorney for Defendant
NORTH COAST RAILROAD AUTHORITY

ATTACHMENT A

Attachment A - available in .pdf format version only

The Press Democrat: Print a Story

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G-P MILL SAWS LAST LOG

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BYLINE: MIKE GENIELLA, THE PRESS DEMOCRAT

PAGE: B1

FORT BRAGG

The last redwood log was sawed Thursday at the **Georgia-Pacific Corp. mill**, where generations of families have earned a living over the past 117 years.

As big saw blades sliced through the 35-inch-diameter log, somber **mill** workers gathered for a final look at a way of life that's vanishing across the North Coast timber region. In early June, **Georgia-Pacific** announced it would close the oceanfront **mill**, citing a global glut of lumber and stiff competition.

For a few moments Thursday, it seemed like the good old days when robust redwood logs rumbled regularly through the **Fort Bragg** sawmill. The last log, the trunk of a tree estimated to be 125 years old, dwarfed more typical smaller logs. Almost 3 feet across, the log was quickly transformed by saw blades into thick planks of premium-grade redwood lumber.

"Damn, it's too bad it couldn't last," said Dave Bowman, a 37-year **mill** veteran.

Rough remnants of the final log will be carved into plaques for the last workers at the **mill**.

For Bowman and other **mill** workers, Thursday's low-key ceremony officially marked the beginning of the end for a sprawling lumber manufacturing complex that once covered 440 acres, employed 1,500 or more workers and was for decades the economic mainstay of **Fort Bragg** and the surrounding region.

Today will be the last day for the 50 sawmill workers who are left. After that, only about 75 employees will remain to handle the last lumber to be dried, finished and shipped. Then they, too, will be laid off, leaving the **mill** complex in the hands of a skeleton crew until it's cleaned up and sold for development.

Production Superintendent Paul Johnson will be one of the lucky few to stay on for at least another year.

“When I went to work here, they used to say there was only another 10 years left. So I guess we've all been lucky that the jobs have lasted as long as they have,” Johnson said.

Still, Johnson said, the toll on longtime **mill** workers is going to be high.

“The average guy has been here 25 years or more, usually coming right out of high school. About 52 of them have been at the **mill** so long they qualified for the maximum 30 weeks' severance pay.

“Where are these guys going to find comparable jobs? A lot of them won't. And some of them will have to leave town to do so,” Johnson lamented.

Johnson and Mike Floyd, both 40-year **mill** veterans, are the two remaining workers with the most years.

Floyd said four generations of his family have worked at the **mill**, including his father, who had a job there for 47 years. “Before him, my grandfather worked here for 45 years,” Floyd said.

He said workers for years have known the **mill's** future was bleak. Chronic log shortages have shut the **mill** down eight of the past 24 months. Machinery that once ran around the clock, requiring three shifts of workers, has been running only eight-hour days.

Still, the looming closure hurts.

“Everybody tried really hard to keep this **mill** going. We all made a good living, and we didn't want it to end,” Floyd said.

Floyd said he hopes to make a living until retirement by becoming a blacksmith. “Until now, it's been a hobby. I'm going to see where it leads.”

Black humor laced Thursday's log ceremony.

Joe Melo, a longtime **mill** worker, introduced himself as “Ben Screwed.”

Russell Merritt, a 32-year **mill** electrician, complained that “it's the corporate bean-counters that have done us in. They don't know one end of a piece of lumber from the other, but they're the ones deciding our fate.”

Mill manager Ron Holen was presented with a wooden plaque that crudely suggested where he could place the last log.

“It goes with the territory,” Holen said. He autographed the plaque for its maker.

Production superintendent Johnson said he understood the foul humor. “You've got to find ways to make light of a very difficult situation. Otherwise, things can get pretty dark.”

Equipment operator Jerry King, 73, is a 37-year **mill** veteran. He had the honor Thursday of hauling the last log to the sawmill.

King said it was a ``pretty choking moment. I've been around, but this gets to you."

You can reach Staff Writer Mike Geniella at 462-6470 or mgeniella@pressdemocrat.com.

PHOTO:5 by CHRISTOPHER CHUNG / The Press Democrat

MAP: by The Press Democrat: **Georgia-Pacific mill** closes

1: A front-end loader that normally bears a full load to the debarker carries the last redwood log Thursday to the **Georgia-Pacific** lumber **mill** in **Fort Bragg**.

2: **Georgia-Pacific** lumber **mill** workers stand along the large log saw area as they watch the final log being cut at the **Fort Bragg mill** on Thursday. About 50 workers are being laid off today, while another 75 will go as the shutdown proceeds. The **mill**, in operation for more than a century, was at the center of a vast lumber complex that served as the economic mainstay for much of the region

3: The last log to be cut at the **Georgia-Pacific mill** in **Fort Bragg** is hauled onto the dock to begin the milling process.

4: Dennis Lazarus, a 24-year employee of the **Georgia-Pacific** lumber **mill** in **Fort Bragg**, watches Thursday as the final log is cut.

5: Arturo Villapando, left, and James Sipila remove the final pieces of lumber from the last log off a conveyor belt at the **Georgia-Pacific** lumber **mill** in **Fort Bragg**. The lumber will be made into plaques for employees.

Keywords: TIMBER CLOSING

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ATTACHMENT B

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FOR CALIFORNIA WESTERN RAILROAD, INC.

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d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT OF
ALLAN HEMPHILL

1. My name is Allan Hemphill and I reside at 137 Porterfield Circle, Cloverdale, California. I am the Chairman of North Coast Railroad Authority ("NCRA").

2. I was appointed by the County of Sonoma, State of California as its representative to the North Coast Railroad Authority on October 1993. When Sonoma County became a member of the NCRA.

3. The NCRA was created by Government Code § 93000, *et seq.* to restore rail service over the course of the Northwestern Pacific Railroad ("NWP") a 316 mile railroad traditionally serving the lumber industry. "NWP" was the name utilized by the Southern Pacific in operating this 316 mile railroad line bisecting the North Coast of California.

4. In the 1980's Southern Pacific in recognition of the lumber industry in Northern California on the North Coast was declining sought abandonment of the entire railroad arguing that the NWP was worth more dead than alive. It proposed to sell its rail for scrap metal. Southern Pacific's abandonment petition was opposed by the Public Utility Commission of the State of California and by local governments on the North Coast.

5. Southern Pacific's abandonment petition was denied. After denial of its petition it sold the northern half of the railroad operating between Willits and Arcata ("Eel River Division") to another capitalized sole proprietor and leased the southern half of the railroad operating between Willits and Lombard (Russian River Division).

6. In 1989 the operator of the Eel River Division ceased operating and declared bankruptcy. In response the California Legislature at the urging of five Northern California counties formed the North Coast Railroad Authority by Government Code §§ 93000, *et seq.* for the purpose of preserving rail service on the North Coast.

7. In 1992 the NCRA utilizing state funds purchased the Eel River Division for \$5 million and immediately sought a private lessee. Finding no private lessee, NCRA commenced rail operations on its own account along its entire course interchanging with the California Northern at Willits.

8. Although I am informed and believe this Southern Pacific had interchanged as many as 18,000 cars per year as late as the early 1970's mostly of lumber products, The lumber industry had declined to the point where NCRA while enjoying

the active lumber support of the lumber industry interchanged no more than 4,000 cars annually, almost entirely lumber cars, almost all originating north of Willits.

9. The State of California allocated bond funds of approximately \$2 million between 1992 and 1996 for improving the Eel River line constituting almost two years of commercial income, including that of the interchanging California Western at Willits.

10. In 1995 NCRA was a founding member of the Northwestern Pacific Railroad Authority, a joint powers agency comprised of the NCRA, the County of Marin, and the Golden Gate Bridge Highway and Transportation District ("NWPRA"). The NWPRA was formed for the purpose of acquiring the NWP South of Willits.

11. In April 1996 the NWPRA purchased the Russian River Division of the NWP for \$23 million from Southern Pacific, NCRA contributing \$12 million derived from a loan from the Federal Department of Transportation guaranteed by the State of California.

12. In the 1996 Transaction NWPRA acquired ownership of the line South of Healdsburg at MP 68.22 and NCRA acquired ownership of the Line from MP 142 near Willits to MP 68.22 near Healdsburg and an easement to operate on the rail line South of MP 68.22 in return for assuming all maintenance costs until such time as transit service is instituted between Mile Post Marker 86.00 to Larkspur in Marin County, the heavily populated 101 corridor, at which time NWPRA and NCRA would share maintenance costs. (Subsequently NWPRA transferred its ownership to the Sonoma Marin Area Rapid Transit ("SMART") formed by the California Legislature, California Public Utilities Code §§ 150000, *et seq.*).

13. In the summer of 1996 NCRA commenced operations across the entire course of the NWP Line. In December 1996 El Nino Pacific Storm closed the railroad requiring millions of dollars in storm repairs. Subsequently FEMA funded those repairs as the railroad now constituted a public asset entitled to emergency funds for storm restoration.

14. In May 1997 the railroad reopened along its entire course. However NCRA's cash flow was severely and adversely affected because of Union Pacific's inability to supply lumber rail cars to the NCRA at interchange, Union Pacific claiming that the rail car shortage was occasioned by gridlock in the Southwestern United States as a result of the Union Pacific-Southern Pacific Merger. Whatever the cause, Southern Pacific did not interchange empty rail cars to NCRA and NCRA lost the ability to develop operating revenue to meet its operating expenses.

15. Recognizing that NCRA enjoyed a perilous cash position it issued a Request For Proposal for a private operator to assume the responsibility for rail operations, approving the proposal of North Western Pacific Railway Company Ltd. ("NWPY") and its maintenance company Rail-Ways Inc. in January 1998. Less than two weeks later, another major pacific storm generated by the El Nino weather pattern caused substantial landslides along the course of the Eel River Division and substantial wash outs on the Southern Division. President Clinton declared Presidential Disaster 1203 on February 8, 1998 including NCRA with funding to repair railroad. NCRA contracted with its new private carrier and its maintenance company Rail-Ways to perform such repairs.

16. Rail-Ways performed restoration work on the Russian River Division during the months of March-May 1998 and resumed service on the Russian River Division at a cost in excess of \$1 million. Service resumed on the Russian River Division in May 1998, including interchanging California Western's cars from its sole freight customer, Georgia Pacific. However, FEMA refused to reimburse its NWPY repair invoices because it surcharged those invoices for the cost of repairs in 1996-1997 FEMA having retroactively disallowed work on "active landslides". The disallowance was based upon an interoffice memorandum issued by FEMA in 1984 by which the Washington Office alerted regional offices to cease funding emergency repairs over the course of active land slides. Although the work had been approved by FEMA, preformed, and reimbursed, FEMA determined to retroactively to disallow the invoices and charge the disallowance against the invoices submitted by NWPY.

17. Between May 1998 and November 1998 NWPY operated on the Russian River Division interchanging California Western cars. On November 27, 1998 the Federal Railroad Administration issued Emergency Order to 21 halting all rail traffic until safety issues were resolved on the Line and the line restored to Class I status.

18. In January 1999 NCRA issued a Request for Bids for restoration of the track to respond to Emergency Order 21. In March 1999 it issued and approved a contract with Herzog Construction Company for \$1.1 million for restoration of the track to resolve Emergency Order 21 concerns and additional \$735,000 for signal restoration which was subcontracted to Mass Electric Corporation. All of the work was to be funded by State of California funds advanced to NCRA.

19. Herzog completed its portion of the work in the Fall of 1999, but the Signal Maintenance Contractor in September 1999 after completing approximately 60% of the work claimed that it was owed \$1.2 million for services to date and that its contract was not limited to the subcontract of \$681,000, but that it was entitled to time and materials which amounted to \$1.2 million. Work on the signals ceased and the FRA refused to inspect a portion of the work. In mid 2000 NWPY utilizing its own forces and its own funding opened 20 miles of railroad to Petaluma to serve dairy customers importing a small number of cars per month of incoming grain shipments. The FRA in February 2001 lifted Emergency Order 21 to reopen the railroad to Petaluma.

20. In September 2001 NWPY ceased operating claiming it had no funds and that it had incurred \$400,000 of maintenance costs. NCRA disputed the claim and additionally had no immediate funding to reimburse.

21. Between September 2001 and July 2002 NCRA sought to restore NWPY to active status culminating in a formal Standstill Agreement providing NWPY a period of time to exclusively propose a reopening plan, which was subsequently extended to June 30, 2005. During that time NWPY sought to obtain partners to join with it including the current owner of the California Western to joint venture and restore service.

22. It was reported in 2004 to the NCRA Operator Committee, of which I was a member, that the current owners of the California Western had decided that it would not work with NWPY to jointly restore service because of its perception of NWPY's business ethics.

23. In June 2005 the NCRA terminated NWPY's contract. In July 2006 NCRA will issue Request For Proposal for a replacement operator for NWPY. NCRA is optimistic that it will receive at least two proposals including one from the current operators of the California Western Railroad.

24. With few exceptions, I have attended almost every board meeting of the NCRA since October 1993 when I was appointed. During that time, I only recall one occasion on which John Mayfield attended a meeting, that being in July 2000 when he appeared with his attorney to complain about an invoice California Western had received in the amount of \$154,319 from Rail-Ways, Inc.

25. Rail-Ways, Inc. had performed track work to enable California Western to obtain partial relief from Emergency Order No. 21 to enable it to resume its excursion service over four miles of NCRA track it operated upon pursuant to a Trackage Rights Agreement. Rail-Ways, Inc. had performed track work for California Western, at the request of California Western, and without the involvement of NCRA. After receiving the invoice, California Western disclaimed any responsibility for the invoice, claiming it was NCRA's responsibility to repair the track.

26. The applicable Trackage Rights Agreement was dated March 11, 1999 and was entered into between California Western and NCRA. Paragraph 14.1(c) of that Agreement provides as follows:

"CWR shall have no cause of action against NCRA for the condition of the joint tracks."

Paragraph 4.10 of the Agreement provides:

“ . . . CWR shall have the right, but not the obligation, at CWR’s sole cost and expense to make such repairs and to perform such maintenance as CWR in its sole discretion may consider to be necessary on the joint trackage owned by NCRA. . . .”

Although NCRA had no contractual obligation to resolve the dispute between Rail-Ways, Inc. and California Western, NCRA did so as an accommodation to California Western. Resulting was a Settlement Agreement and Mutual Release in the form as that attached hereto as Exhibit “B-1” and incorporated herein by this reference. Nothing in that Settlement Agreement and Mutual Release even hinted that California Western Railroad, Inc. held any cause of action against NCRA for failure to interchange Georgia Pacific cars, or any reference to a demand by California Western to interchange Georgia Pacific cars.

27. I know of no occasion when John Mayfield ever raised the issue of interchanging Georgia Pacific cars with the Board of Directors of NCRA. I know of no occasion in which John Mayfield, on behalf of California Western, offered to utilize maintenance crews to repair or restore rail traffic. Had California Western made such an offer, it would have been enthusiastically received by NCRA which is burdened by the responsibility to comply with the California Environmental Quality Act (“CEQA”) before performing any such work. Volunteer work by a connecting railroad would not be subject to CEQA and would have been a welcome offer, had it been received. Instead, California Western took the position that even work that was performed at its

request to a rail construction contractor for its sole benefit was not its financial responsibility.

VERIFICATION

I, ALLAN HEMPHILL, declare under penalty of perjury under the laws of the United States of America, that I have read the foregoing statement and its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of NCRA. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Eureka, California this 11th day of January, 2006.



ALLAN HEMPHILL

ATTACHMENT B-1

Attachment B-1 - Available in .pdf format version only

SETTLEMENT AGREEMENT AND MUTUAL RELEASE**THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

("Agreement") is entered into by and between California Western Railroad, Inc. ("CWR"), a California corporation, and North Coast Railroad Authority ("NCRA"), a local powers authority of the State of California, based upon the following understandings:

A. WHEREAS, on or about June 23, 2000, Rail-Ways, Inc. ("Rail-Ways") filed a lawsuit in the Mendocino County Superior Court, State of California, Case No. SCUk CVG 0083687 against CWR and NCRA alleging a breach of contract claim and a common count claim seeking damages in excess of \$152,319 ("Complaint") (a copy of which Complaint is attached hereto as Exhibit B); and

B. WHEREAS, CWR contends that it is entitled to have NCRA defend and indemnify CWR with respect to any and all losses, including without limitation its attorneys' fees, CWR incurs as a result of the Rail-Ways' Complaint; and

C. WHEREAS, on or about July 13, 2000, CWR submitted a Government Code Claim ("Code Claim") to NCRA with respect to CWR's contention that it is entitled to have NCRA defend and indemnify CWR with respect to any and all losses it incurs as a result of the Rail-Ways' Complaint; and

D. WHEREAS, CWR and NCRA agree that the effective date of this Agreement is July 31, 2000 ("Effective Date"). This is true regardless of whether the parties have actually executed this Agreement by the Effective Date and regardless of whether the NCRA's Board has approved this Agreement by the Effective Date.

E. WHEREAS, CWR and NCRA wish to reach full and final settlement among themselves as specifically set forth herein to avoid any future litigation among themselves concerning the matters specifically set forth herein.

In consideration of the mutual covenants set forth below, the parties agree and stipulate as follows:

1. NCRA shall indemnify CWR for any and all losses caused to CWR by the Complaint starting as of the Effective Date. NCRA's obligation to indemnify CWR for any and all losses caused by the Complaint shall include, without limitation, payment of CWR's reasonable attorneys' fees and costs incurred in defense of the Complaint, any payments resulting from a settlement of the Complaint (after approval by NCRA to enter into any such settlement), and any liability resulting from the Complaint (including without limitation any judgments entered with respect to the Complaint). CWR shall be responsible for any and all losses caused by the Complaint prior to the Effective Date.

2. CWR and NCRA agree that no further litigation and/or claims will occur between them with respect to the Complaint and Code Claim.

3. Each of CWR and NCRA, on each of their own behalf and assigns, hereby release and forever discharge the other and its respective predecessors, successors and assigns, and each of its respective past, present and future employees, agents, attorneys, consultants, officers, directors and stockholders, from any and all claims, damages, demands, arbitrations, actions, or causes of action, known or unknown, asserted or unasserted, arising out of, in any way connected with or resulting from the Complaint and the Code Claim.

4. The releases described above are full and final releases applied to all losses, including but not limited to damages, costs, expenses and attorneys' fees, incurred by said parties, arising out of or in any way connected with the Complaint and the Code Claim. It is the intention of CWR and NCRA, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the Complaint and the Code Claim mentioned herein, and said parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code which states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him must have materially affected his settlement with the debtor."

The parties to this release expressly consent that, notwithstanding Section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands, arbitrations, actions, and causes of action. The parties acknowledge and agree that this waiver is an essential and material term of this release and, without such waiver, this Agreement would not have been entered into.

5. The parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequence of it. Each of the signers

of this Agreement hereby represents and covenants that he or she has understood the contents hereof, is authorized to execute this Agreement on behalf of the party for which he or she is signing, and signs the same as his or her own

6. This Agreement is binding upon all of the parties, past and present subsidiaries, parents, divisions, affiliates, predecessors in interest and assigns.

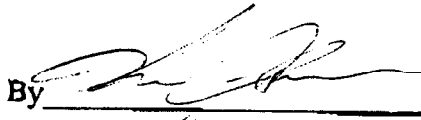
7. This Agreement contains the entire agreement between the parties and is executed without reliance upon any representation by any person of any nature or extent of damages or legal liability therefor.

8. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law. Any provisions of California law to the contrary notwithstanding, this Agreement may be enforced in the Superior Court of the State of California, County of ^{Mendocino} ~~Sacramento~~, by any motion under California Code of Civil Procedure Section 664.6 or by any other means permitted by law.

9. This Agreement may be executed in counterpart original or may be executed by facsimile.

DATED: 10-2-00

CALIFORNIA WESTERN RAILROAD

By 

Its PRESIDENT

of this Agreement hereby represents and covenants that he or she has carefully read and understood the contents hereof, is authorized to execute this Agreement on behalf of the party for which he or she is signing, and signs the same as his or her own free act.

6. This Agreement is binding upon all of the parties, as well as their past and present subsidiaries, parents, divisions, affiliates, predecessors in interest, successors and assigns.

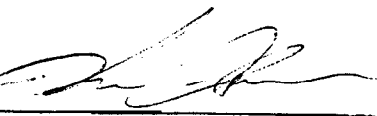
7. This Agreement contains the entire agreement between the parties hereto and is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefor.

8. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law. Any provisions of California Evidence Code Sections 1115 through 1128 notwithstanding, this Agreement may be enforced in the Superior Court of the State of California, County of ^{Mendocino} ~~Sacramento~~, by any party hereto by a motion under California Code of Civil Procedure Section 664.6 or by any other procedure permitted by law.

9. This Agreement may be executed in counterpart originals and may be executed by facsimile.

DATED: 10-2-00

CALIFORNIA WESTERN RAILROAD, INC.

By 
Its PRESIDENT

DATED: _____

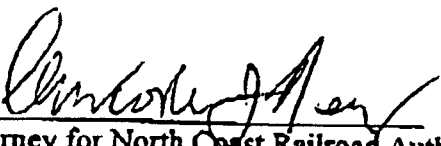
NORTH COAST RAILROAD AUTHORITY

By _____

Its

APPROVED AS TO FORM

DATED: 9/25/00

By 
Attorney for North Coast Railroad Authority

APPROVED AS TO FORM

DATED: 9/27/00

THE DIEPENBROCK LAW FIRM
A Professional Corporation

By 
Attorneys for California Western Railroad, Inc.

11/06/00 15:38 1 707 444 2416
SEP-27-00 WED 04:54 PM

NCR

FAX NO.

→→→ CHRIS NEARY

P. 08 002/002

09-27-00 15:25 CHRISTOPHER J. NEARY

ID=707 459 3018

P07/07

DATED: 11-6-00

NORTH COAST RAILROAD AUTHORITY

By

Its

Executive Director

APPROVED AS TO FORM

DATED: 9/25/00

By

Attorney for North Coast Railroad Authority

APPROVED AS TO FORM

DATED: 9/27/00

THE DIEPENBROCK LAW FIRM
A Professional Corporation

By

Attorneys for California Western Railroad, Inc.

ATTACHMENT C

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

North Coast RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT OF
DAVID ANDERSON

1. My name is David Anderson and I reside in Orange County, California.
2. In July 2001, North Coast Railroad Authority ("NCRA") retained Willdan and HNTB Architects, Engineers, Planners to perform on-call engineering services for NCRA. I functioned as Project Manager for the HNTB/Willdan team.
3. On February 6, 2002, NCRA tasked HNTB/Willdan to prepare a Capital Assessment Report to provide NCRA with a comprehensive condition assessment of the entire Northwestern Pacific Railroad and to make recommendations for improvements and measures needed to implement the NCRA's strategy to commence railroad service at the earliest possible opportunity.
4. The HNTB/Willdan consultant team performed a focused field recognizance effort in Spring 2002. As a result of this recognizance, a Capital Assessment Report was developed which documents the methodology, findings and

recommendations to reopen railroad service.

5. The Capital Assessment Report recommended a feasible five-year capital improvement program requiring the investment of \$39.7 million of available funds to provide Federal Railroad Administration Class I operations over the course of the entire railroad.

6. In November 2005, at a cost in excess of \$300,000, HNTB/Willdan prepared an updated Capital Assessment Report for the Russian River Division spanning from Lombard to Willits to provide NCRA with a comprehensive condition assessment of the Russian River Division and to provide recommendations for improvements and processes needed for NCRA to reopen rail service. The Report was completed on November 6, 2005.

7. The Report concluded that the cost of reopening the rail line from Lombard to Willits such as would be sufficient to interchange with California Western, would be the sum of \$17.73 million, comprising: \$64,000 for geotechnical work; \$160,000 for tunnel work; \$4.5 million for structures; \$4.12 million for roadway improvements; and \$8.28 million for signal improvements with contingencies, the cost is projected to reach \$23 million.

8. The Assessment Team was comprised of members that included the engineering and professional disciplines of environmental, roadbed, track, geotechnical, bridge, tunnel, signals and roadway crossings. Specific expertise the Assessment Team possessed are as follows: Oscar Larson and Associates of Eureka California for environmental evaluation; the firm of Shannon Wilson for geotechnical assessments; the

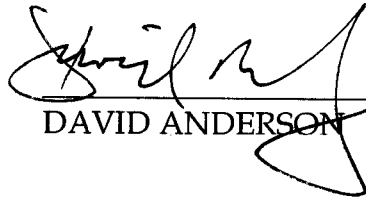
firm of Shannon Wilson for assessment of tunnels; bridge assessment under the direction of HNTB's Pat Casey, former Southern Pacific Structural Engineer; signal assessment by an engineer associated with HNTB and Donald Dunn, who was the District Signal Engineer for the Western Region of Southern Pacific Railroad; and the roadbed assessment was directed by Timothy W. Cobb, the former Chief Engineer of the Maine Central Railroad and currently Deputy Program Manager for Cal Train On-Call Engineering.

9. The Assessment was based upon field investigations conducted between September 1, 2005 and September 22, 2005. The Capital Assessment Report resulted in the preparation of a 113 page Report accompanied by background data set forth on eight CD disks and engineering drawings for each mile of the railroad from Lombard to Willits.

VERIFICATION

I, DAVID ANDERSON, declare under penalty of perjury under the laws of the United States of America, that I have read the foregoing statement and its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of NCRA. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Eureka, California this 11th day of January, 2006.



DAVID ANDERSON



ATTACHMENT D

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

North Coast RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT OF
MITCH STOGNER

1. My name is Mitch Stogner and I reside in Santa Rosa, California.
2. In August 2003, I was appointed Executive Director of North Coast Railroad Authority ("NCRA") and I am in possession of its business records maintained in the ordinary course of business.
3. In April 2000, the Governor of the State of California announced the Traffic Congestion Relief Program ("TCRP") which included an allocation of \$60 million by the State of California for NCRA. Subsequently, the appropriation was adopted by the California Legislature and signed into law as Government Code § 14556.50, *et seq.* Included in the allocation at Government Code § 14556.50(i) was \$31 million for long term stabilization projects authorized to the Authority [NCRA] as directed by the California Transportation Commission. The appropriation was enrolled as Assembly Bill 2928 in the 2000 Legislative Session.

4. Before accessing the appropriation, NCRA was required to file an application with the California Transportation Commission, an Executive Branch Commission appointed by the Governor of the State of California. Prior to making such application, NCRA as applicant is required to comply with the California Environmental Quality Act ("CEQA") which requires varying degrees of environmental review.

5. NCRA commenced the application process in September 2002. In December 2002, the State of California suffered an unprecedented General Fund deficit. On or about December 9, 2002, the Governor signed a proclamation identifying the need for the Legislature to suspend the 2003-04 transfer of sales tax and gasoline from the General Fund to the Transportation Improvement Program, which transfer was subsequently approved by the Legislature, therefore depleting the funds available to cover allocations that had been made for TCRP Projects. As a result, the only applications that have been approved by the California Transportation Commission since I have been Executive Director (since August 2003) is \$1.2 million for an environmental cleanup project which has been completed.

6. NCRA 's appropriation remaining to be funded is \$41.3 million. Included in the remaining allocation is the entire appropriation of \$31 million for stabilization projects.

7. Within the last year, NCRA has expended \$1.2 million on the repair of two bridges spanning the Petaluma River for the purpose of restoring rail service; has

expended \$680,000 to acquire signal equipment; has expended hundreds of thousands of dollars for preparation of an updated Capital Assessment Report, which was completed in November 2005; and acquired construction equipment including a new backhoe and a new excavator for the purpose of effectuating repairs.

8. On January 11, 2006, the Board of Directors of NCRA will consider a proposal to make its equipment available to the current operators of the California Western Railroad to address storm repairs occasioned by the New Years Eve flood.

9. In addition to the funding by the State of California, the United States Congress in 2005 designated NCRA as the lead agency for receipt of \$8.6 million of ISTEA Funds for improvement of the rail line (HR 4, the Transportation Bill). In the same legislation, the United States Congress forgave the \$12 million loan issued in 1996 to acquire the Russian River Division.

10. NCRA is actively working to access both State and Federal allocations for the purpose of restoring rail service on the Russian River Division and the Eel River Division.

11. In addition, NCRA is issuing a Request for Proposals for a replacement operator for NWPY whose contract was terminated on June 30, 2005 for operation of rail service.

VERIFICATION

I, MITCH STOGNER, declare under penalty of perjury under the laws of the United States of America, that I have read the foregoing statement and its assertions are true and correct to the best of my knowledge, information and belief. I further declare

that I am qualified and authorized to submit this verification on behalf of NCRA. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Eureka, California this 11th day of January, 2006.


MITCH STOGNER

ATTACHMENT E

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

North Coast RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

SUPPLEMENTAL VERIFIED STATEMENT OF
JOHN DARLING

1. My name is John Darling and I reside in Willits, California. I was the Manager of the Northwestern Pacific Railway Company, LLC ("NWPY") when in January 1998 it successfully responded to a Request for Proposals for an operator to lease and operate the Northwestern Pacific Rail Line. I continued as Manager of NWPY until 2005 and accordingly, I have personal knowledge of the events transpiring between January 1998 when the contract was awarded to NWPY and 2005.

2. I have reviewed the Opening Statement of Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. and particularly, Attachment G thereto, the Minutes of the Board of Directors of North Coast Railroad Authority ("NCRA") dated November 18, 1998.

3. This meeting was held nine days prior to the issuance of Emergency Order No. 21. I reviewed Item 15 of said Minutes which provides as follows:

“There are problems with the connection in Willits, California Western being able to provide freight service with Union Pacific.”

4. In reading these Minutes, my recollection is refreshed that at sometime during the period when I was first involved with interchange operations at Willits with California Western in May 1998 and November 27, 1998 when the Federal Railroad Administration issued Emergency Order No. 21, California Western had suffered limitations upon its ability to interchange cars at Willits due to the condition of its track. With certainty, I recall that California Western's track was insufficient to utilize standard sized lumber cars and instead utilized what we referred to as "shorties." Additionally, at sometime during the relevant period, I recall being informed that California Western was suffering from weight limitations on one of its bridges and that it was seeking financial support from Georgia Pacific to resolve the problem.

5. At this late date, I am not certain that this is the "problem" referenced in the Minutes of November 18, 1998, but I do recall California Western suffering unanticipated limitations on the amount of cars it could interchange with NWPY at Willits.

VERIFICATION

I, JOHN DARLING, declare under penalty of perjury under the laws of the United States of America, that I have read the foregoing statement and its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of NWPY. I know that willful misstatements or omissions of material facts constitute Federal

criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Eureka, California this 11th day of January, 2006.


JOHN DARLING

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2006, I caused the foregoing Reply Statement of Defendant North Coast Railroad Authority to be served via Federal Express overnight delivery, postage prepaid, by deposit at a Federal Express depository in Willits, California, addressed as follows:

Fritz R. Kahn, Esq.
Fritz R. Kahn, P.C.
1920 N Street, NW
8th Floor
Washington, D.C. 20036

William A. Mullins, Esq.
Baker & Miller, PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, D.C. 20037

David N. Chandler, Esq.
1747 4th Street
Santa Rosa, CA 95404



JENNIFER M. O'BRIEN